

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

ALL ACTIONS

**RESPONSE OF THE NATIONAL FOOTBALL LEAGUE AND
NFL PROPERTIES LLC TO DUERSON'S SECOND MOTION REQUESTING
THE DISSEMINATION OF DATA [DOC. # 6102]**

In his motion, Tregg Duerson, Personal Representative of the Estate of David Duerson, (“Mr. Duerson”), moves this Court to order Co-Lead Class Counsel to disseminate to all Plaintiffs’ counsel of record all data utilized by Co-Lead Class Counsel in negotiating the original proposed settlement announced on August 23, 2013 and the settlement preliminarily approved on July 7, 2014. (*See* Duerson Mot. at 1.) Mr. Duerson also seeks the settlement-related documentation requested by Bloomberg L.P. and ESPN, Inc. (*Id.*) The National Football League (“NFL”) and NFL Properties LLC (collectively, the “NFL Parties”) take no position with respect to the former request directed to Co-Lead Class Counsel.

With respect to the latter request, the NFL Parties do not object to the production of the settlement-related documentation that the Court ordered the parties to share with the Court through the Special Master. Specifically, pending Court approval, the NFL Parties will provide Mr. Duerson with the February 10, 2014 report that was prepared by their actuary and submitted to the Special Master on February 10, 2014, and supplemental information regarding the report that was requested by the Special Master and produced to him on February 24, 2014.

In agreeing to produce such materials, the NFL Parties do not concede any of the arguments made by Mr. Duerson. Nor do the NFL Parties believe that the materials have any bearing on the Fairness Hearing scheduled for November 19, 2014. The purpose of the actuarial report submitted by the NFL Parties to the Special Master was to assess the financial sufficiency of the previously capped settlement between the parties. Given that the settlement is now uncapped, the financial sufficiency of the settlement is not at issue. Nonetheless, the NFL Parties agree to produce the materials subject to Court approval.

The NFL Parties note that they did not provide the Court or the Special Master with any additional documentation for consideration in determining whether the Court should approve a class action settlement beyond the materials noted above that were provided to the Special Master and the materials that were publicly filed with the Court in support of the two Motions for Preliminary Approval and Conditional Certification submitted by Plaintiffs.¹

Finally, although the NFL Parties do not object at this time to disclosing these materials, the NFL Parties reserve their right to argue, should it be necessary at a later date, that Mr. Duerson has not demonstrated that there is a right of access under common law or pursuant to the First Amendment to the materials requested.

¹ At the Special Master's request, the NFL Parties produced background materials summarizing certain benefits that the NFL provides to retired players, including, for example, the 88 Plan. Such background materials were not provided for consideration in determining whether the Court should approve a class action settlement and thus are not responsive to Mr. Duerson's request. Moreover, the Settlement Agreement does not release claims alleging entitlement to NFL CBA Disability Benefits. (See Class Action Settlement Agreement dated as of June 25, 2014 at §18.6, MDL 2323, 12-md-02323, Doc. No. 6073-2 (E.D. Pa.).) Thus, such materials have no bearing on the Fairness Hearing.

Dated: September 2, 2014

Respectfully submitted,

/s/ Brad S. Karp

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Certificate of Service

On September 2, 2014, I electronically filed a copy of the foregoing document through the CM/ECF system for the United States District Court for the Eastern District of Pennsylvania, which will send a notice of electronic filing to all counsel of record and make it available for viewing and downloading from the CM/ECF system.

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